

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) Chapter 11
)
UAL CORPORATION., et al.,) Case No. 02-48191
) (Jointly Administered)
)
) Honorable Eugene R. Wedoff
)
Debtors) Pre-Trial Hearing: May 9, 2005, 1:30 p.m.
) Settlement Hearing: May 10, 2005, 10:30 a.m.
)

**PBGC'S BRIEF IN SUPPORT OF
DEBTORS' EMERGENCY MOTION
TO APPROVE AGREEMENT WITH PBGC**

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Date: May 9, 2005

and PBGC . . . fail to agree upon a date of termination that the court has any role in fixing it.”⁵⁰

This Court, therefore, has no role in setting a termination date for the Ground Plan.

C. Nothing in ERISA Prevents UAL and PBGC from Terminating the Pension Plans by Agreement

Nothing in ERISA prohibits a company from agreeing to a PBGC-initiated termination of its pension plan, regardless of the provisions of its collective bargaining agreement. Termination of a pension plan may be initiated by a company or by PBGC.⁵¹ PBGC is prohibited from proceeding with a company-initiated termination under section 1341 if the termination would violate the terms and conditions of a collective bargaining agreement.⁵² But there is no similar restriction on PBGC-initiated terminations under section 1342. It is a well-established tenet of statutory construction that “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”⁵³

To make it even clearer that collective bargaining provisions present no bar to PBGC-initiated terminations, section 1341(a)(3) explicitly provides that the prohibition in that provision does *not* limit PBGC’s authority to initiate proceedings to terminate a plan under section 1342. And section 1342(c) specifically allows a PBGC-initiated termination to be implemented through

⁵⁰ *Id.* at 297.

⁵¹ 29 U.S.C. §§ 1341, 1342.

⁵² 29 U.S.C. § 1341(a)(3).

⁵³ *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotes omitted).

agreement between PBGC and the plan administrator. Accordingly, nothing in ERISA prevents United and PBGC from terminating the pension plans by agreement.⁵⁴

CONCLUSION

The Court should approve the UAL/PBGC Agreement.

Date: May 9, 2005

Respectfully submitted,

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⁵⁴ URPBPA argues that “United cannot enter into a § 1342(c) termination agreement if doing so would constitute a breach of its fiduciary duties to one or more of the plans it seeks to terminate.” URPBPA Objection at 8. But it is well established that termination of a pension plan is a “settlor function” that is not subject to fiduciary duties. *See* DOL Opinion Letter, 13 BNA Pension Reporter 472 (March 13, 1986) (“there is a class of discretionary activities which relate to the formation, rather than the management, of plans. These so-called ‘settlor’ functions include decisions relating to the establishment, termination and design of plans and are not fiduciary activities subject to Title I of ERISA”). *Accord Lockheed Corp. v. Spink*, 517 U.S. 882, 890-91 (1996).